

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

REMBRANDT WIRELESS	*	Civil Docket No.
TECHNOLOGIES, LP,	*	2:13-CV-213
	*	Marshall, Texas
Plaintiff,	*	
VS.	*	
	*	
SAMSUNG ELECTRONICS CO. LTD,;	*	
SAMSUNG ELECTRONICS	*	
AMERICA, LLC; SAMSUNG	*	
TELECOMMUNICATIONS AMERICA,	*	
LLC; SAMSUNG AUSTIN	*	
SEMICONDUCTOR, LLC,	*	
	*	February 13, 2015
Defendants.	*	8:40 a.m.

TRANSCRIPT OF JURY TRIAL
BEFORE THE HONORABLE RODNEY GILSTRAP
UNITED STATES DISTRICT COURT

APPEARANCES:

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(Proceedings recorded by mechanical stenography,
transcript produced on CAT system.)

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8 P R O C E E D I N G S

9 (Jury out.)

10 COURT SECURITY OFFICER: All rise.

11 THE COURT: Be seated, please.

12 All right. We'll now proceed with the formal
13 charge conference. Yesterday evening, I met with
14 counsel for the parties in chambers, and we conducted a
15 lengthy and informal charge conference, reviewing the
16 joint submission from the parties and additional
17 redrafting from the Court.

18 Each side was given an opportunity to offer
19 any and all comments, observations, additions, deletions
20 that they thought was appropriate. The Court considered
21 that fully and at length, and yesterday evening,
22 delivered electronically a copy of what is before the
23 parties on each side.

24 And at this time, we'll conduct a formal
25 charge conference, and I'll hear any objections for the
record from both sides as to the jury instructions --
final jury instructions and verdict form that they now

1 have.

2 If counsel who's going to speak for each of
3 the parties would go collectively to the podium at this
4 time, we'll start with the final jury instructions.

5 And, counsel, as I indicated, we'll do this on
6 a page-by-page basis. Looking at the proposed jury
7 instruction, the first page is just the style of the
8 case.

9 Page 2 begins the actual substance of the
10 instructions, and I'll ask: Does either party have any
11 objection to any part set forth on Page 2?

12 MR. ENGER: Eric Enger for the Plaintiff, Your
13 Honor. No objection.

14 MR. BIDDINGER: Brian Biddinger for the
15 Defendants, Your Honor. And no objection.

16 THE COURT: Objection to anything on Page 3?

17 MR. ENGER: No objection from the Plaintiff.

18 MR. BIDDINGER: No objection from the
19 Defendants.

20 THE COURT: Page 4?

21 MR. ENGER: No objection from the Plaintiffs.

22 MR. BIDDINGER: No objection from Defendants.

23 THE COURT: Page 5?

24 MR. ENGER: No objection from the Plaintiff,
25 Your Honor.

1 MR. BIDDINGER: No objection from Defendants.

2 THE COURT: Page 6?

3 MR. ENGER: No objection from the Plaintiff.

4 MR. BIDDINGER: No objection from Defendants,
5 Your Honor.

6 THE COURT: Page 7?

7 MR. ENGER: No objection from the Plaintiff.

8 MR. BIDDINGER: Your Honor, Defendants have an
9 objection on Page 7 to the claim constructions that are
10 contained in the juror notebooks.

11 Those objections are set forth in our
12 objection to the report and recommendation on the claim
13 construction order from Magistrate Judge Payne and also
14 in the briefing submitted on claim construction in this
15 case.

16 THE COURT: And, Counsel, I'm not asking you
17 to waive any objections you may have to the substance of
18 the claim construction. I am asking if you have any
19 objection to me including those by reference in this
20 charge as opposed to setting those constructions out
21 verbatim in the instructions themselves.

22 MR. BIDDINGER: No objection to that, Your
23 Honor.

24 THE COURT: Okay. Anything else on Page 7?

25 Turn to Page 8. Any objection from either

1 party to anything on Page 8?

2 MR. ENGER: No objection from the Plaintiff.

3 MR. BIDDINGER: No objection from Defendants.

4 THE COURT: Page 9?

5 MR. ENGER: No objection from the Plaintiff.

6 MR. BIDDINGER: No objection from Defendants,

7 Your Honor.

8 THE COURT: Page 10?

9 MR. ENGER: No objection from the Plaintiff.

10 MR. BIDDINGER: No objection from Defendants.

11 THE COURT: Page 11?

12 MR. ENGER: No objection from the Plaintiff.

13 MR. BIDDINGER: No objection from Defendants.

14 THE COURT: Page 12?

15 MR. ENGER: No objection from the Plaintiff.

16 MR. BIDDINGER: No objection from Defendants.

17 THE COURT: Page 13?

18 MR. ENGER: No objection from the Plaintiff.

19 MR. BIDDINGER: No objection from Defendants.

20 THE COURT: Page 14?

21 MR. ENGER: No objection from the Plaintiff.

22 MR. BIDDINGER: No objection from Defendants.

23 THE COURT: Page 15?

24 MR. ENGER: No objection from the Plaintiff.

25 MR. BIDDINGER: No objection from Defendants.

1 THE COURT: Page 16?

2 MR. ENGER: No objection from the Plaintiff.

3 MR. BIDDINGER: No objection from Defendants.

4 THE COURT: Page 17?

5 MR. ENGER: No objection from the Plaintiff.

6 MR. BIDDINGER: No objection from Defendants.

7 THE COURT: Page 18?

8 MR. ENGER: No objection from the Plaintiff.

9 MR. BIDDINGER: No objection from Defendants.

10 THE COURT: Page 19?

11 MR. ENGER: No objection from the Plaintiff.

12 MR. BIDDINGER: No objection from Defendants.

13 THE COURT: And the last page, Page 20?

14 MR. ENGER: No objection from the Plaintiff.

15 MR. BIDDINGER: No objection from Defendants.

16 THE COURT: This morning in chambers, I

17 advised counsel that in addition to the jury
18 instructions that they received yesterday evening, there
19 was a very short addition of a couple of sentences that
20 I intended to include but overlooked. I furnished that
21 to the parties this morning.

22 That addition, which will be asserted at the
23 bottom of Page 18 is as follows, and I'll read it:
24 Certain documents that were shown to you are
25 demonstratives. Demonstratives are a party's

1 description, picture, or model to describe something
2 involved in the trial.

3 If your recollection of the evidence differs
4 from the demonstratives, rely on your recollection.
5 Demonstratives are not evidence. However, a witness's
6 testimony that references the demonstrative is evidence.

7 Is there any objection to inclusion of that
8 language at the bottom of Page 18 from the Plaintiff?

9 MR. ENGER: No, Your Honor.

10 THE COURT: From the Defendants?

11 MR. BIDDINGER: No, Your Honor.

12 THE COURT: All right. Then let's turn next
13 to the proposed verdict form.

14 Any objection to any matter on Page 1 of the
15 verdict form?

16 MR. ENGER: Not from the Plaintiff.

17 MR. BIDDINGER: No objection from Defendants.

18 THE COURT: Page 2 of the verdict form, which
19 includes Question 1?

20 MR. ENGER: No objection from the Plaintiff.

21 MR. BIDDINGER: No objections from Defendants.

22 THE COURT: Page 3 of the verdict form, which
23 includes Question 2 of the verdict?

24 MR. ENGER: No objection from the Plaintiff.

25 MR. BIDDINGER: Your Honor, Defendants object

1 to Question 2 as containing a single question on
2 invalidity as opposed to breaking that out into the two
3 issues of obviousness and written description.

4 THE COURT: All right. That -- that objection
5 is overruled.

6 We'll move to Page 4, which has Question 3 of
7 the verdict form on it. Any objection there?

8 MR. ENGER: None from the Plaintiff, Your
9 Honor.

10 MR. BIDDINGER: Your Honor, Defendants object
11 to Question 3, specifically at the end of Question 3,
12 the statement "up to the time of trial." This form of
13 verdict was not proposed by the parties and not
14 introduced until after the close of evidence.

15 It's Defendants' position that it forces the
16 jury to put in a number that may be inconsistent with
17 the evidence that was presented in the case.

18 THE COURT: Well, Defendants' objection is
19 overruled. It's the Court's opinion that this
20 adequately charges or seeks to inquire of the jury
21 consistent with the evidence produced during the trial.
22 And to leave it out would create uncertainty.

23 Therefore, the objection is overruled.

24 Any objection to Page 5, which is the final
25 page of the verdict form?

1 MR. ENGER: None from the Plaintiff, Your
2 Honor.

3 MR. BIDDINGER: No objection from Defendants,
4 Your Honor.

5 THE COURT: All right. Counsel, that
6 completes the formal charge conference. The Court needs
7 a few moments to now produce copies of the instructions
8 so that I can furnish each member of the jury with their
9 own written copy of those instructions at the conclusion
10 of the final charge and closing arguments.

11 After those are produced, collated, and
12 stapled, it's the Court's intention to return, at which
13 time I'll bring in the jury and begin with the Court's
14 final instructions to the jury and proceed to then have
15 argument from counsel in the nature of closing
16 arguments.

17 I understand there may be an issue as to
18 whether or not the courtroom should be sealed during all
19 or a portion of closing arguments. What's the parties'
20 position in that regard?

21 MR. ALAVI: Your Honor, on behalf of the
22 Plaintiff, we have looked at our closing statements.
23 There is one issue involving talking about the 10-cent
24 royalty with respect to the BlackBerry license.

25 To educate the Court, the protective order

1 that applies is the party protective order. Black --
2 BlackBerry was a party to this case. I believe
3 Paragraph 19 provides that the protective order does not
4 govern the use of those documents at trial; that is, the
5 protections are for pretrial purposes.

6 BlackBerry, recognizing that, has filed a
7 motion to seal the courtroom for discussion of those
8 numbers. That motion is pending.

9 THE COURT: Does the Plaintiff urge the Court
10 to grant the motion, or does the Plaintiff take any
11 position on the motion?

12 MR. ALAVI: Plaintiff takes no position on the
13 motion, Your Honor.

14 THE COURT: Does Defendant -- do Defendants
15 have a response?

16 MR. HADDAD: We have also no position on
17 BlackBerry's motion, Your Honor.

18 THE COURT: All right.

19 MR. HADDAD: We concur with the remaining
20 statements the Plaintiff made. With respect to
21 third-party chip --

22 THE COURT: You need to speak up or go to the
23 podium --

24 MR. HADDAD: I'm sorry.

25 THE COURT: -- Mr. Haddad.

1 MR. HADDAD: With respect to the third-party
2 chip data, Your Honor, there is some third-party chip
3 data from Texas Instruments. And I believe the date of
4 that data is in the 2006 timeframe, Your Honor, that's
5 subject to the third-party protective order.

6 THE COURT: Are Defendants, based thereon,
7 urging the Court to seal the courtroom during closings
8 in that regard?

9 MR. HADDAD: We -- we take no position on
10 that, Your Honor.

11 THE COURT: All right. Well, the Court is
12 aware of these requests from former parties with regard
13 to sealing. The Court, considering those requests and
14 balancing the need to maintain an open and public
15 proceeding wherever possible and including the fact that
16 these parties are no longer active parties in the
17 litigation, finds that it would not be best to seal the
18 courtroom during presentation of closing arguments.

19 And, therefore, BlackBerry and other
20 parties -- other persons' request to seal the courtroom
21 during closing, to the extent they exist, are denied.
22 The courtroom will not be sealed during closing
23 arguments.

24 The Court has serious concerns about not only
25 the public's right to know but the disruptive nature of

1 sealing and unsealing the courtroom during what the
2 Court views is the most focused and serious part of the
3 trial, and that is counsel's final arguments to the
4 jury.

5 So for those and other reasons, the courtroom
6 will remain open during closing arguments.

7 All right. The Court will produce the copies
8 I've mentioned, and then we'll proceed to bring in the
9 jury and begin with the final instructions from the
10 Court and closing arguments from counsel.

11 Counsel, those of you that are going to be
12 presenting closing arguments, you understand the Court's
13 directive that the Plaintiff's first closing must cover
14 at least half of your 35 minutes.

15 And I understand that both Mr. Jenner and
16 Mr. Sherwood are going to be splitting the Defendants'
17 closing time. That allocation is strictly up to you two
18 gentlemen.

19 Whoever argues during closings for either
20 side, if you want a warning from the Court on the time
21 that you have used or have left, simply ask for that
22 when you go to the podium, and I'll give you those
23 warnings.

24 Given the nature of the closings, if you don't
25 ask for them, I'm not going to try and anticipate what

1 you want, so I won't give you closing warnings or won't
2 give you warnings on your time unless you ask for them.

3 All right. Counsel, Court stands in recess.

4 COURT SECURITY OFFICER: All rise.

5 (Recess.)

6 (Jury out.)

7 COURT SECURITY OFFICER: All rise.

8 THE COURT: Be seated, please.

9 Let's bring in the jury, Mr. Johnston.

10 COURT SECURITY OFFICER: All rise for the
11 jury.

12 (Jury in.)

13 THE COURT: Please be seated.

14 Ladies and gentlemen, you've now heard all the
15 evidence in this case. I will now instruct you on the
16 law that you must apply. Each of you will have your own
17 copy of these instructions for your review when you
18 retire to deliberate in a few minutes.

19 Accordingly, there's no need to take written
20 notes on these instructions unless you particularly want
21 to do so.

22 It's your duty to follow the law as I give it
23 to you. On the other hand, as I've said previously,
24 you, the jury, are the sole judges of the facts.

25 Do not consider any statement that I've made

1 in the course of the trial or make in these instructions
2 as an indication that I have any opinion about the facts
3 of this case.

4 You are about to hear closing arguments of the
5 attorneys. Statements and arguments of the attorneys
6 are not evidence and are not instructions on the law.
7 They're entitled -- they're intended only to assist the
8 jury in understanding the evidence and the parties'
9 contentions.

10 A verdict form has been prepared for you.
11 You'll take this verdict form to the jury room, and when
12 you have reached a unanimous agreement as to your
13 verdict, you will have your foreperson fill in the
14 blanks in that form, date it, and sign it.

15 Answer each question in the verdict form from
16 the facts as you find them. Do not decide who you think
17 should win and then answer the questions accordingly.
18 Your answers and your verdict must be unanimous.

19 In determining whether any fact has been
20 proven in this case, there are two types of evidence
21 that you may consider in properly finding the truth as
22 to the facts in this case.

23 One is direct evidence, such as the testimony
24 of an eyewitness. The other is indirect or
25 circumstantial evidence; that is, the proof of a chain

1 of circumstances that indicates the existence or
2 non-existence of certain other facts.

3 As a general rule, the law makes no
4 distinction between direct and circumstantial evidence
5 but simply requires that you find the facts based on the
6 evidence presented, both direct and circumstantial.

7 You may, unless otherwise instructed, consider
8 the testimony of all witnesses, regardless of who may
9 have called them, and of all the exhibits received into
10 evidence, regardless of who may have introduced them, in
11 answering any question.

12 By allowing testimony or other evidence to be
13 introduced over the objection of an attorney, the Court
14 did not indicate any opinion as to the weight or effect
15 of such evidence.

16 As stated before, you are the sole judges of
17 the credibility of all the witnesses and what weight and
18 effect to give to the evidence in this case.

19 When the Court sustained an objection to a
20 question addressed to a witness, you must disregard the
21 question entirely and may draw no inference from its
22 wording or speculate about what the witness would have
23 said if he or she had been permitted to answer.

24 At times during the trial, it was necessary
25 for the Court to talk with the lawyers here at the bench

1 or out of your hearing or by calling a recess and
2 talking to them while you were out of the courtroom.

3 This happened because often during a trial,
4 something comes up that does not involve the jury. You
5 should not speculate on what was said during such
6 discussions that took place outside of your presence.

7 Certain testimony in this case has been
8 presented to you through depositions. A deposition is
9 the sworn, recorded answers to questions asked to a
10 witness in advance of the trial.

11 If a witness cannot be present to testify in
12 person from the witness stand, the witness's testimony
13 may be presented under oath in the form of a deposition.

14 Before this trial, attorneys representing the
15 parties in the case questioned these witnesses through a
16 deposition, and the witnesses were each under oath. A
17 court reporter was present and recorded the testimony.

18 Deposition testimony is entitled to the same
19 consideration as testimony given by a witness in person
20 from the witness stand.

21 Accordingly, you should judge the credibility
22 and weigh the importance of deposition testimony to the
23 best of your ability just as if the witness had
24 testified in open court and in person.

25 While you should consider only the evidence in

1 this case, you are permitted to draw such reasonable
2 inferences from the testimony and exhibits as you feel
3 are justified in the light of common experience.

4 In other words, ladies and gentlemen, you may
5 make deductions and reach conclusions that reason and
6 common sense lead you to draw from the facts that have
7 been established by the testimony and evidence in the
8 case.

9 Remember that the testimony of a single
10 witness may be sufficient to prove any fact, even if a
11 greater number of witnesses have testified to the
12 contrary, if, after considering all of the other
13 evidence, you believe that single witness.

14 When knowledge of a technical subject may be
15 helpful to the jury, a person who has special training
16 or experience in that technical field, called an expert
17 witness, is permitted to state his or her opinion on
18 those technical matters.

19 However, you're not required to accept that
20 opinion. As with any other witness, it is solely up to
21 you to decide whether to rely upon it or not.

22 As I mentioned at the beginning of the trial,
23 there are two standards of proof that you will apply in
24 this case: Preponderance of the evidence and clear and
25 convincing evidence.

1 A preponderance of the evidence means evidence
2 that persuades you that a claim is more probably true
3 than not true. More probably true than not true.
4 Sometimes this is talked about as being the greater
5 weight and degree of credible testimony.

6 Clear and convincing evidence means evidence
7 that produces in your mind an abiding conviction that
8 the truth of the parties' factual contentions are highly
9 probable.

10 Although proof to an absolute certainty is not
11 required, the clear and convincing evidence standard
12 requires a greater degree of persuasion than is
13 necessary for the preponderance of the evidence
14 standard.

15 However, clear and convincing evidence is not
16 so high as the standard used in criminal law, which is
17 evidence beyond a reasonable doubt. If the proof
18 establishes in your mind an abiding conviction of the
19 truth of a matter, then the clear and convincing
20 evidence standard has been met.

21 As I did at the start of this case, I'll first
22 give you a summary of each side's contentions in the
23 case, and I'll then provide you with detailed
24 instructions on what each side must prove to win on each
25 of its contentions.

1 As I previously told you, this case concerns
2 two United States patents, Patent No. 8,023,580,
3 referred to as the '580 patent or the '580 patent, and
4 Patent 8,47 -- 457,228, referred to as the '228 patent,
5 which I'll collectively refer to as the patents-in-suit.

6 Rembrandt, the Plaintiff, seeks money damages
7 from Samsung, the Defendants, for allegedly infringing
8 the patents-in-suit by making, using, selling, or
9 offering for sale products that Rembrandt argues are
10 covered by Claims 2 and 59 of the '580 patent and Claim
11 21 of the '228 patent. These claims are the asserted
12 claims of the patents-in-suit.

13 The products that are alleged to infringe are
14 Samsung products that include Bluetooth enhanced data
15 rate or EDR. Samsung denies that it has infringed the
16 asserted claims of the patents-in-suit and argues that,
17 in addition, the asserted claims are invalid.

18 Your job is to decide whether Samsung has
19 infringed the asserted claims of the patents-in-suit and
20 whether the asserted claims of the patents-in-suit are
21 invalid.

22 Infringement and invalidity are separate
23 questions and should be considered and answered
24 separately. If you decide that any claim of the
25 patents-in-suit has been infringed and is not invalid,

1 you will then need to decide any money damages to be
2 awarded to Rembrandt to compensate it for such
3 infringement.

4 At the beginning of the trial, I gave you some
5 general information about patents and the patent system
6 and a brief overview of the patent laws relevant to this
7 case. I'll now give you more detailed instructions
8 about the patent laws that relate to this case.

9 Before you can decide many of the issues in
10 this case, you will need to understand the role of
11 patent claims. The patent claims are the numbered
12 sentences at the end of the patent. The claims are
13 important because it is the words of the claims that
14 define what a patent covers.

15 The figures and text in the rest of the patent
16 provide a description and/or examples of the invention
17 and provide a context for the claims, but it is the
18 claims that define the breadth of the patent's coverage.

19 Each claim is effectively treated as if it
20 were a separate patent, and each claim may cover more or
21 less than another claim. Therefore, what a patent
22 covers collectively depends upon what each of its claims
23 covers.

24 Each patent claim sets forth in words a set of
25 requirements in a single sentence. The requirements of

1 a claim are usually divided into parts or steps called
2 limitations or elements.

3 If a device satisfies each of these
4 requirements in the claim's sentence, then it is said
5 that the device is covered by the claim, falls under the
6 claim, or infringes the claim.

7 For example, a claim that covers an invention
8 of a table may recite a tabletop, four legs, and the
9 glue that secures the legs to the tabletop. In this
10 example, the tabletop, legs, and glue are each separate
11 limitations of the claim.

12 If a device is missing even one limitation or
13 element of a claim, it does not meet all the
14 requirements of a claim and is not covered by the claim.
15 If a device is not covered by the claim, it does not
16 infringe that claim.

17 You first need to understand each claim in
18 order to decide whether or not there is infringement of
19 a claim and to decide whether or not the claim is
20 invalid.

21 The first step to understand the meaning of
22 the words used in the patent claim -- the first --
23 excuse me.

24 The first step is to understand the meaning of
25 the words used in the patent claim. The law says that

1 it's my role to define the terms of the claims, and it's
2 your role to apply my definitions to the issues that you
3 are asked to decide in this case.

4 Therefore, as I explained at the start of the
5 case, I have determined the meaning of certain claim
6 terms, and I have provided to you my definitions of
7 certain claim terms. These definitions are in your
8 juror notebooks. You must accept my definitions of
9 these words in the claims as being correct.

10 It is your job to take these definitions that
11 I have supplied and apply them to the issues that you
12 are asked to decide, including both the issues of
13 infringement and invalidity.

14 For the claim terms that I have not construed
15 or defined, you are to use the ordinary and accustomed
16 meaning of the terms as understood by one of ordinary
17 skill in the art, which is to say in the field of
18 technology of the patent at the time of the invention.

19 I'll now explain infringement in detail. In
20 order to prove direct infringement by literal
21 infringement, Rembrandt, the Plaintiff, must prove by a
22 preponderance of the evidence that Samsung made,
23 imported, used, sold, or offered for sale a product or
24 process that meets all the requirements of at least one
25 of the asserted claims and did so without permission of

1 Rembrandt during the time the patents-in-suit were in
2 force.

3 In order to prove infringement, Rembrandt must
4 prove that each of the requirements for infringement is
5 met by a preponderance of the evidence. Infringement is
6 assessed on a claim-by-claim basis. Therefore, there
7 may be infringement as to one claim but no infringement
8 as to another.

9 You must compare each of the asserted claims
10 to each of the accused Samsung products to determine
11 whether all the requirements of any assert -- asserted
12 claim are met. In doing so, you should not compare the
13 accused Samsung products to any specific example set out
14 in the patents.

15 If you find that the accused product includes
16 each element of the claim, then that product directly
17 infringes that claim, even if such product contains
18 additional elements that are not recited in the claim.

19 The only correct comparison is to compare the
20 accused products with the language of the asserted
21 claims themselves, using the meanings that I have given
22 you.

23 Patent claims may exist in two forms referred
24 to as independent claims and dependent claims.

25 An independent claim does not refer to any

1 other claim of the patent. An independent claim sets
2 forth all the requirements that must be met in order to
3 be covered by that claim. It is not necessary to look
4 to any other claim to determine what an independent
5 claim covers.

6 A dependent claim is a claim that refers to at
7 least one other claim of the patent. A dependent claim
8 incorporates all of the elements of the claim to which
9 the dependent claim refers, as well as the elements
10 recited in the dependent claim itself.

11 To establish literal infringement of a
12 dependent claim, Rembrandt must show by a preponderance
13 of the evidence that Samsung's accused products include
14 each and every element of the dependent claim, as well
15 as the limitations of the independent claim from which
16 it depends.

17 If you find that the independent claim from
18 which the dependent claim depends is not literally
19 infringed, then you cannot find that the dependent claim
20 is literally infringed.

21 I'll now instruct you on the rules that you
22 must follow in deciding whether or not Samsung --
23 Samsung has proven that the asserted claims of the
24 patents-in-suit are invalid.

25 An issued patent is accorded a presumption of

1 validity based on the presumption that the United States
2 Patent and Trademark Office, called the PTO, acted
3 correctly in issuing the patent.

4 This presumption of validity extends to all
5 issued patents, including those that claim the benefit
6 of an earlier filed patent application, such as
7 so-called continuations or continuations-in-part.

8 To prove that any claim of a patent is
9 invalid, Samsung must persuade you by clear and
10 convincing evidence that the claim is invalid.

11 Like infringement, invalidity is determined on
12 a claim-by-claim basis. You must determine separately
13 for each asserted claim if that claim is invalid. If
14 one claim of a patent is invalid, this does not mean any
15 other claim is necessarily invalid.

16 Claims are construed the same way for
17 determining -- determining infringement as for
18 determining invalidity.

19 Samsung contends that the asserted claims are
20 invalid for failure of the patent to provide an adequate
21 written description of the full scope of the claims.
22 Samsung must prove by clear and convincing evidence that
23 the patents do not describe the full scope of the
24 claims.

25 The patent laws require that a patent must

1 contain an adequate written description of the claims of
2 the patent. The written description requirement helps
3 to ensure that the patent applicant actually invented
4 what is claimed.

5 A claim is not invalid on written description
6 grounds simply because the embodiments of the
7 specification do not contain examples explicitly
8 covering the full scope of the claim language.

9 The written description requirement is
10 satisfied if persons of ordinary skill in the field of
11 the invention would recognize, from reading the patent
12 specification, which includes the originally filed
13 claims, that the inventor possessed the subject matter
14 contained in the issued claims of the patent.

15 Only enough must be included in the
16 specification to convince persons of ordinary skill in
17 the art that the inventor possessed the full scope of
18 the claims.

19 In evaluate -- evaluating whether the
20 specification has provided an adequate written
21 description, you may take into account such factors as:

- 22 (1) the nature and scope of the patent claims;
23 (2) the complexity, predictability, and
24 maturity of the technology at issue;
25 (3) the existing knowledge in the relevant

1 field; and

2 (4) the scope and content of the prior art.

3 In order to be patentable, the invention must
4 not have been obvious to a person of ordinary skill in
5 the field of technology of the patent at the time the
6 invention was made.

7 A patent claim is invalid if the claimed
8 invention would have been obvious to a person of
9 ordinary skill in the field of the invention at the time
10 the patent application was filed.

11 Samsung may establish that a patent claim is
12 invalid by showing by clear and convincing evidence that
13 the claimed invention as a whole would have been obvious
14 to persons having ordinary skill in the art at the time
15 the invention was made.

16 In determining whether a claimed invention is
17 obvious, you must consider the level of ordinary skill
18 in the field of technology of the patent that someone
19 would have had at the time the claimed invention was
20 made, the scope and content of the prior art, and any
21 differences between the prior art and the claimed
22 invention.

23 Prior art may include items that were publicly
24 known and -- and that would have been used or offered
25 for sale or references, such as publications or patents,

1 that disclose the claimed invention or elements of the
2 claimed invention.

3 Whether or not an item of prior art was not
4 before the PTO, the presumption of validity of the
5 patent remains intact, and the clear and convincing
6 evidence standard does not change.

7 To be prior art, the item or reference must
8 have been made, known, used, published, or patented
9 either before the invention was made or more than one
10 year before the filing date of the patent application.

11 However, prior art does not include a
12 publication that describes the inventor's own work and
13 was published less than a year before the date of the
14 invention.

15 Prior art includes:

16 (1) patents issued more than one year before
17 the filing of the patent or before the date of the
18 invention;

19 (2) publications, such as articles, having a
20 date more than one year before the filing date of the
21 patent or before the date of the invention;

22 (3) United States patents that have a filing
23 date prior to the date of the invention of the subject
24 matter in the patent;

25 (4) any product in public use or on sale in

1 the United States more than one year before the filing
2 date of the patent in issue;

3 (5) any product that was publicly known or
4 used by others in the country before the date of the
5 invention of the claimed subject matter in the patent;

6 And (6) any product that was made or built in
7 this country by another person before the date of the
8 invention of the claimed subject matter in the patent
9 and not abandoned, suppressed, or concealed.

10 You've heard me refer to what is called the
11 date of invention. A patent's priority date or date of
12 invention is used to determine the pool of potential
13 prior art. Only art that was made, known, used,
14 published, or patented before the invention can be
15 considered prior art.

16 The effective filing date of the
17 patents-in-suit is December the 5th, 1997.

18 The existence of each and every element of the
19 claimed invention in the prior art does not necessarily
20 prove obviousness. Most, if not all, inventions rely on
21 the building blocks of prior art.

22 In considering whether a claimed invention is
23 obvious, you should consider whether, at the time of the
24 claimed invention, there was a reason that would have
25 prompted a person having ordinary skill in the field of

1 the technology of the patent to combine the known
2 elements in a way the claimed invention does, taking
3 into account such factors as:

4 (1) whether the claimed invention was merely
5 the predictable result of using prior art elements
6 according to their known functions;

7 (2) whether the claimed invention provides an
8 obvious solution to a known problem in the relevant
9 field;

10 (3) whether the prior art teaches or suggests
11 the desirability of combining elements claimed in the
12 invention;

13 (4) whether the prior art teaches away from
14 combining elements in the claimed invention;

15 (5) whether it would have been obvious to try
16 the combinations of elements such as when there is a
17 design need or market pressure to solve a problem, and
18 there are a finite number of identified, predictable
19 solutions;

20 And (6) whether the change resulted more from
21 design incentives or other market forces.

22 To find that prior art rendered the invention
23 obvious, you must find that the prior art provided a
24 reasonable expectation of success.

25 In determining whether the claimed invention

1 was obvious, do not use hindsight.

2 In other words, you should not consider what a
3 person of ordinary skill in the art would know now or
4 what has been learned from the teaching of the
5 patents-in-suit.

6 Rembrandt contends that an ordinary person --
7 excuse me -- that a person of ordinary skill in the art
8 of the Rembrandt patents, on December the 5th, 1997,
9 when Provisional Patent Application No. 60/067,562 was
10 filed and to which each of the Rembrandt patents claim
11 priority, would have had a bachelor's degree in
12 electrical engineering that included coursework in
13 communication systems and networking and two years of
14 work experience in electronic communications.

15 Samsung contends that a person of ordinary
16 skill in the art -- in the art in the field of the
17 patents-in-suit would have had a master's degree in
18 electrical engineering that included coursework in
19 communications systems and networking and at least five
20 years of experience designing network communication
21 systems.

22 The ultimate conclusion of whether a claim is
23 obvious should be based on your determination of several
24 factual issues:

25 (1) You must decide the level of ordinary

1 skill in the field of the invention that someone would
2 have had at the time the claimed invention was made.

3 (2) You must decide the scope and content of
4 the prior art. In determining the scope and content of
5 the prior art, you must decide whether a reference is
6 pertinent or analogous to the claimed invention.

7 Pertinent or analogous prior art includes
8 prior art in the same field of the endeavor as the
9 claimed invention, regardless of the problems addressed
10 by the reference and prior art in different fields
11 reasonably pertinent to the particular problem with
12 which the claimed invention is concerned.

13 Remember that prior art is not limited to
14 patents and published materials but includes the general
15 knowledge that would have been available to one of
16 ordinary skill in the field of the invention.

17 You must decide what difference, if any,
18 existed between the claimed invention and the prior art.

19 In making these assessments, you should take
20 into account any objective evidence, sometimes called
21 secondary considerations, that may have existed at the
22 time of the invention that may shed light on the
23 obviousness or not of the claimed invention, such as:

24 (1) whether the invention was commercially
25 successful as a result of the merits of the claimed

1 invention, rather than the result of design needs or
2 market pressure advertising, or similar activities;

3 (2) whether the invention satisfies a
4 long-felt need;

5 (3) whether others had tried and failed to
6 make the invention;

7 (4) whether others invented the invention at
8 roughly the same time;

9 (5) whether others copied the invention;

10 (6) whether there were changes or related
11 technologies or market needs contemporaneous with the
12 invention;

13 (7) whether the invention achieved unexpected
14 results;

15 (8) whether others in the field praised the
16 invention;

17 (9) whether persons having ordinary skill in
18 the art of the invention expressed surprise or disbelief
19 regarding the invention;

20 (10) whether others sought or obtained rights
21 to the patent from the patent-holder;

22 And, (11), whether the inventor proceeded
23 contrary to accepted wisdom in the field.

24 If you find that Samsung infringed any claim
25 of the asserted patents, you must then consider what

1 amount of damages to award to Rembrandt.

2 I'll now instruct you about the measure of
3 damages. By instructing you on damages, I'm not
4 suggesting which party should win this case on any
5 issue.

6 The damages you award must be adequate to
7 compensate Rembrandt for the infringement. They are not
8 meant to punish an infringer. Your damages award, if
9 you reach this issue, should put Rembrandt in
10 approximately the same financial position that it would
11 have been in had the infringement not occurred.

12 Rembrandt has the burden to establish the
13 amount of its damages by a preponderance of the
14 evidence.

15 In other words, you should award only those
16 damages that Rembrandt establishes that it more likely
17 than not suffered.

18 While the patent owner is not required to
19 prove damages with mathematical precision, it must
20 prove -- prove them with reasonable certainty.

21 The determination of a damage award is not an
22 exact science, and the amount need not be proven with
23 unerring precision. You may approximate, if necessary,
24 the amount to which the patent owner is entitled.

25 In such a case, while the damages may not

1 be -- the damages -- while the damages may not be
2 determined by mere speculation or guess, it is proper to
3 award a damages amount if the evidence shows the extent
4 of the damages as a matter of just and reasonable
5 inference.

6 In this case, Rembrandt seeks a reasonable
7 royalty. A reasonable royalty is defined as the amount
8 of money a willing patent owner and a willing
9 prospective licensee would have agreed upon right before
10 the infringement began for a license to make, use, or
11 sell the invention.

12 A lump-sum royalty is a royalty payment where
13 the patent owner receives a single, upfront payment.
14 You may award a fully-paid, lump-sum royalty for the
15 time period of the infringement.

16 A running royalty, on the other hand, is a
17 royalty where the patent owner collects an ongoing
18 per-unit or percentage payment over a period of time.

19 The patent laws specifically provide that
20 damages for infringement may not be less than a
21 reasonable royalty. At the same time, your damages are
22 not meant to punish Samsung.

23 A royalty is a payment made to a patent-holder
24 in exchange for the right to make, use, or sell the
25 claimed invention. A reasonable royalty is the amount

1 of royalty payment that a patent-holder and an infringer
2 would have agreed to in a hypothetical negotiation
3 taking place at a time period just prior to when the
4 infringement first began.

5 In considering this hypothetical negotiation,
6 you should focus on what the expectations of the
7 patent-holder and the infringer would have been had they
8 entered into an agreement at that time and had they
9 acted reasonably in their negotiations.

10 In determining this, you must assume that both
11 parties believed that the patent was valid and infringed
12 and that the patent-holder and infringer were willing to
13 enter into an agreement.

14 The reasonable royalty you determine must be a
15 royalty that would have resulted from the hypothetical
16 negotiation and not simply a royalty that either party
17 would have preferred.

18 Your focus should be on what the parties'
19 expectations would have been had they entered into
20 negotiations for royalties right before the infringing
21 activities began.

22 The parties agree that the hypothetical
23 negotiation date would have been in September of 2011.

24 Evidence of things that happened after the
25 infringement first began may be considered in evaluating

1 the reasonable royalty only to the extent that the
2 evidence aids in assessing what royalty would have
3 resulted from a hypothetical negotiation.

4 Although evidence of the actual profits of an
5 accused infringer -- that an accused infringer made may
6 be used to determine the anticipated profits at the time
7 of the hypothetical negotiation, the royalty may not be
8 limited or increased based on the actual profits the
9 alleged infringer made.

10 In determining the reasonable royalty, you
11 should consider all of the facts known or available to
12 the parties at the time just before the infringement
13 began.

14 Some of the kinds of factors that you may
15 consider in making your determination are:

16 (1) the royalties received by the patentee for
17 licensing the patents-in-suit proving or tending to
18 prove an established royalty;

19 (2) royalties paid by the licensee for the use
20 of other patents comparable to the asserted patents;

21 (3) the nature and scope of the license as an
22 exclusive or not -- as exclusive or non-exclusive or as
23 restricted or non-restricted in terms of territory or
24 with respect to the parties to whom the manufactured
25 product may be sold;

1 (4) whether or not the licensor had an
2 established policy and marketing program to maintain its
3 patent exclusivity by not licensing others to use the
4 invention or by granting licenses under special
5 conditions designed to preserve that exclusivity;

6 (5) the commercial relationship between the
7 licensor and licensee, such as whether they are
8 competitors in the same territory or in the same line of
9 business or whether they are inventor and promoter;

10 (6) the effect of selling the patented product
11 in promoting sales of other products of the licensee,
12 the existing value of the invention to the licensor as a
13 generator of sales of its non-patented items, and the
14 extent -- the extent of such collateral sales;

15 (7) the -- the duration of the patent and the
16 term of the license;

17 (8) the profitability of the patented
18 invention and whether or not it is commercially
19 successful or popular;

20 (9) the utility and advantages of the patented
21 invention over the old modes or devices, if any, that
22 had been used for achieving similar results;

23 (10) the nature of the patented invention, the
24 character of the commercial embodiment of it as owned
25 and produced by the licensor, and the benefits to those

1 who have used the invention;

2 (11) the extent of the licensee's use of the
3 patented invention and any evidence probative of the
4 value of that use;

5 (12) the portion of the profit or of the
6 selling price that may be customary in the particular
7 business or in comparable businesses to allow for the
8 use of the invention or analogous inventions;

9 (13) the portion of the realizable profits
10 that is due to the patented invention as compared to the
11 portion of the profits due to other factors, such as
12 unpatented elements or unpatented manufacturing
13 processes or features or improvements developed by the
14 licensee;

15 (14) the opinion and testimony of qualified
16 experts;

17 (15) the amount that a licensor and licensee
18 would have agreed upon at the time the infringement
19 began, if both sides had been reasonably and voluntarily
20 trying to reach an agreement; that is, the amount that a
21 prudent licensee would have been willing to pay as a
22 royalty and yet be able to make a reasonable profit and
23 which amount would have been acceptable to a patent
24 owner, if it would have been willing to grant a license.

25 No one factor is dispositive, and you can and

1 should consider the evidence that has been presented to
2 you in this case on each of these factors.

3 In determining a reasonable royalty, you may
4 consider whether Samsung had acceptable non-infringing
5 alternatives that were available at the time of the
6 hypothetical negotiation and whether that would have
7 affected the reasonable royalty the parties would have
8 agreed upon.

9 You may also consider any other factors which,
10 in your mind, would have increased or decreased the
11 royalty the infringer would have been willing to pay and
12 the patent-holder would have been willing to accept,
13 acting as normally prudent business people.

14 The final factor establishes a framework which
15 you should use in determining a reasonable royalty; that
16 is, the pay that would have resulted from negotiation
17 between the patent-holder and the accused infringer
18 taking place at a time just before the infringement
19 began.

20 This now completes my instructions on the
21 applicable law in this case. We will now hear closing
22 arguments from counsel for the parties.

23 The Plaintiff may present its first closing
24 argument at this time.

25 MR. ANAIPAKOS: Thank you, Your Honor.

1 May I approach?

2 THE COURT: You may.

3 MR. ANAIPAKOS: May I also approach the easel,
4 Your Honor?

5 THE COURT: Yes.

6 Would you like a warning on your time?

7 MR. ANAIPAKOS: Yes, Your Honor. If -- if --
8 first if I can save 10 minutes for rebuttal, and if I
9 could have a warning at 17 minutes, Your Honor.

10 THE COURT: 17 minutes and 10 minutes would be
11 at 25.

12 All right. Proceed.

13 MR. ANAIPAKOS: Thank you, Your Honor.

14 Good morning, everybody. We're at the end of
15 a long road today. And in a minute, I'm going to talk
16 to you about the evidence and why that evidence requires
17 a verdict in favor of Rembrandt, but for now, it's time
18 for a little perspective.

19 There's some lessons to be learned here. You
20 know, it's not easy to file a patent case against the
21 biggest electronics company in the world. It really
22 isn't. And 18 months later and a lot of time, effort,
23 and expense, we're here today.

24 And although you haven't been with us for the
25 first 18 months, you've been here for the last 5 days.

1 And what you've seen in the last 5 days is what we've
2 had to go through for the last 15 months: Samsung's
3 efforts to confuse and conceal the truth.

4 When I think back on the last 18 months,
5 Samsung's approach is really clear. Don't believe your
6 lying eyes. Don't believe the evidence that's in front
7 of you. Believe the spin. The examples are everywhere.

8 When we sued them for patent infringement,
9 they said: We don't infringe your patent. And if we
10 do, it's invalid, because it's anticipated and because
11 it's indefinite.

12 Those were two things we heard for 18 months
13 until -- until Wednesday when their expert, Dr. Goodman,
14 had to give that up.

15 We also heard about a license defense.
16 Remember that? They gave that up yesterday, but not
17 without a fight. For 18 months, we heard about that.

18 Think about who they chose as their corporate
19 representative, Dr. Benner. A very nice guy. A very
20 nice guy. But you remember from the cross-examination,
21 he doesn't know anything about this case. He can't
22 answer a single question about invalidity or
23 infringement.

24 Why is that? Why does Samsung send someone
25 here to you to be the face and the voice of the company

1 who doesn't know anything about this case when they have
2 thousands of engineers? They have teams of lawyers who
3 could answer these questions.

4 Why do they do that? Because confusion is the
5 goal. They don't want clarity here. And that couldn't
6 be more obvious than when we talk about EDR.

7 What do they want you to believe in EDR? Oh,
8 we could live without it. Our customers don't need it.
9 It's not that important.

10 But what do we know? It's in every single
11 Bluetooth device they sell. It's in every single
12 Bluetooth device their competitors sell. You cannot buy
13 a Bluetooth chip without it.

14 It is literally everywhere. The Bluetooth SIG
15 that sets the Bluetooth rules has had that as a standard
16 for 11 years. It's everywhere.

17 But what do they tell you? It doesn't matter.
18 It's not important. Don't believe your lying eyes.

19 Then they talk about damages. It gets even
20 more obvious there, right? You have Dr. Becker take the
21 stand. And in order to live in his world, what do you
22 have to do?

23 You have to ignore the settlement agreement
24 that was entered with BlackBerry in this case with these
25 parties, with these patents, with these claims, in this

1 honorable court.

2 And what did they say? Oh, that's not
3 comparable. The settlement in this case isn't
4 comparable. We want you to look at this Bandspeed case
5 that involved different parties, different technologies.
6 Had nothing to do with this case.

7 And in that case, as you've learned, Bandspeed
8 was a member of what? The Bluetooth SIG. They'd
9 already licensed Samsung. That's the reality they want
10 you to live in, that that's the comparable case, not
11 this one.

12 You heard those voices on the videos, some
13 voices that you didn't recognize. Those were
14 BlackBerry's lawyers. They were in this case, and they
15 weren't cooperating with us. They were -- they were
16 coming up to a trial date, so they settled.

17 But they don't want you to look at that,
18 because when you look at that settlement number,
19 Dr. Becker's analysis doesn't make any sense. So all
20 the fiction and all the smoke goes away today. I
21 couldn't be happier about it.

22 So I'm going to go through some of the
23 highlights of the testimony, and we're going to talk
24 about these topics: Infringement, validity, and
25 damages.

1 Let's start with infringement. The two key
2 experts for each side were Dr. Morrow and -- and
3 Dr. Goodman. Dr. Morrow is here today.

4 I'll tell you, if there is a smarter, more
5 honest, direct, likeable expert than Dr. Morrow, I have
6 not met him yet. And you watched as he detailed all of
7 the work that he's done in this case.

8 Both of the experts looked at the Bluetooth
9 specifications, but Dr. Morrow went a lot further than
10 that. He looked at all those Bluetooth PICS.

11 Remember the seven boxes that they kept
12 hauling up for him to go through, each one of those
13 verifying that Samsung uses EDR, which practices our
14 patents?

15 He did that little device, the black box with
16 the antennas, the packet sniffers, and confirmed that
17 every single Bluetooth communication was using EDR. He
18 looked at source code. Dr. Goodman didn't do any of
19 that.

20 When you look at infringement and this debate
21 over the term "indicates," it's really not very close.
22 The -- the -- the witnesses are lined up here for you:
23 Dr. Morrow; Dr. Jones, who we'll discuss in a minute,
24 the engineer at Samsung whose testimony you heard by
25 deposition; Dr. Hall, who wrote the EDR standard; and

1 the Bluetooth SIG manual itself.

2 Ask for that when you're back deliberating.
3 Look through it. When you get to the EDR section, it's
4 huge. When you get to the EDR section, you're going to
5 see that it uses the word "indicates." There is no real
6 debate here.

7 Dr. Morrow literally wrote the book on
8 Bluetooth. And what did he tell us about how this
9 works? He told us exactly how the LT_ADDR and the TYPE
10 fields indicate the modulation method of the Bluetooth
11 payload.

12 The LT_ADDR and TYPE field select a column and
13 row in Table 6.2, and once you have that information,
14 there is no doubt about what modulation method is for
15 the Bluetooth payload.

16 Remember this demonstrative that Dr. Morrow
17 walked us through? Here's the packet, LT_ADDR is 7,
18 corresponds with the column. Here's the TYPE, 0100,
19 corresponds with the row.

20 And there you go. At the intersection, what
21 do we now know?

22 Well, we now know that this packet has two
23 different types of modulation methods, GFSK and DPSK.
24 And the second modulation method was indicated by the
25 first.

1 That's what our patents do. He walked you
2 through it. He spent two hours going
3 claim-element-by-claim-element showing you how we had
4 satisfied all of that.

5 And then they call Dr. Hall. And remember to
6 ask for this document. It is Plaintiff's Exhibit 126 at
7 Page 9. Dr. Hall is the guy -- poor guy, spent four
8 years of his life writing this EDR standard -- this EDR
9 standard.

10 And what did he say before lawyers were
11 involved? Before there was a lawsuit, before there was
12 anyone watching or writing things down, what did he say?

13 He said that the payload modulation scheme is
14 indicated in the packet header AM_ADDR and TYPE field.
15 AM_ADDR is just the old way they used to refer to
16 LT_ADDR. They're the same thing. That's our
17 infringement case straight from the horse's mouth before
18 any lawyers were involved.

19 Then we call Dr. Jones. You remember him. I
20 call him Boy Wonder, but he's the guy who worked at
21 Broadcom for several years reviewing source code.
22 Remember the source code? It had that big confidential
23 stamp. You couldn't even see through it. We had to
24 keep clearing the courtroom to look at it.

25 He reviewed all of it and saw how those chips

1 worked, and he showed you how there was a striking
2 similarity to the claims in the case. This was the
3 chart he used. He went line-by-line in the source code
4 comparing it to the claim elements in the case.

5 And in his cross-examination, did you hear one
6 syllable where they asked him about whether he had made
7 a mistake in his source code review? Not one. They
8 didn't ask him a single question.

9 Do you think there are people at Samsung who
10 know how to review source code? Why don't they ask him
11 about it? Because they don't want -- they don't like
12 the answer.

13 So how do they defend it? They do this thing
14 in opening statement and with the witnesses, remember,
15 where they folded the papers and they put one on top of
16 the other, and they said here's 1.2, before there was
17 multiple types of modulations, and here's 2.0 and they
18 look the same, so there's no change?

19 Well, Dr. Hall explained that isn't true at
20 all. He's the person who wrote all the differences
21 between 1.2 and 2.0, and there it is on the screen for
22 you. That's what he said in this court.

23 Let's talk for a moment about validity. His
24 Honor has instructed you that our patents have a
25 presumption of validity. We had an expert on validity,

1 Dr. Akl. You probably see his bio in your -- in your
2 binder.

3 He's not here. You want to know why? We sent
4 him home yesterday because the case on validity has
5 fallen apart and we didn't need him.

6 They gave up half of it when their expert was
7 cross-examined. And let's look at what remains. Your
8 instructions that the Court read on obviousness are very
9 clear.

10 They have to show by clear and convincing
11 evidence this burden is on Samsung, that the invention
12 was obvious. And you can't use 20/20 hindsight. It's
13 very clear from the instructions.

14 And you also can't take the patent and then
15 try to piece all of the prior art back together using
16 the patent, right? You can't assume the invention to
17 try to find the invention.

18 But that's exactly what Samsung's trying to do
19 here. They argue about this Boer patent, what we call
20 the Boer patent and they call the Lucent patent. It's
21 the same thing. This is the same patent that for
22 15 months they said invalidated our patent because it
23 anticipated it until Wednesday when that went away.

24 Now they have to acknowledge the holes in the
25 Boer patent, and they're on the screen there for you.

1 No master/slave. It doesn't use different types or
2 families of modulations. His Honor has instructed you
3 on what that means. There's no address information in
4 the header. Those are the gaps in Boer.

5 So what do they have to do now to fill those
6 gaps? Well, they've got to try to combine other pieces
7 of art from here and there, to try to get to a complete
8 puzzle piece, but they can't do it.

9 And one of the instructions I really want you
10 to think about is this No. 4, whether the prior art
11 teaches away from combining elements in the claimed
12 invention. So keep that in mind.

13 And now we talk about the art that they want
14 to combine with Boer. It's called Upender. This is
15 Defendants' Exhibit 1190. Please take a look at this.

16 What are we looking at here? Master/slave,
17 M/S, that's what our patent teaches. Down at the bottom
18 is Boer. Upender is reviewing these two, right? Up
19 arrow is good. Down arrow, not so good. And look at
20 Boer, all up arrows. Look at master/slave, mostly down
21 arrows.

22 So what is Upender saying? Is it saying use
23 master/slave? No. It's saying the opposite. It's
24 saying we prefer the Boer approach. So you can't go to
25 Upender to add that master/slave piece.

1 Why? Because it doesn't like the master/slave
2 approach. It prefers Boer. It teaches away. That's
3 the point. It's not a close case on obviousness.

4 And when you think about obviousness, think
5 about this: It's easy to think things are obvious once
6 someone comes up with the idea. Remember Dr. Hall up
7 there? Very smart guy. He spent three-and-a-half years
8 of his life trying to write that EDR specification, and
9 they want you to believe this was obvious.

10 They also make a written description defense
11 to our patents. Again, they've got the burden of proof
12 here with clear and convincing evidence.

13 Now, what's the test? The test is that the
14 claims that we assert have to have support in the
15 original application, including the original claims.

16 And so what do I have on the screen in front
17 of you? This is the patent from 1998. It's in
18 evidence. You can ask for it. And you have Claims 23,
19 25, and 27. Those are the key claims.

20 We talked about this with Dr. Goodman. What
21 did he say about them? Well, he said: With respect to
22 Claim 23, it covers two multi-lingual transceivers.
23 With respect to 25, it covers a multi-lingual master
24 transceiver. That's the master part.

25 And then 27 covers a multi-lingual remote

1 transceiver. That's the slave part. Game over. That's
2 all we need. That's all the disclosure we need for the
3 claims in this case.

4 So can I have the ELMO for a second, please?

5 We heard a lot about this deletion. Remember,
6 we've heard all about these deletions that somehow
7 vanished out of our patent. That's what they want you
8 to believe.

9 And speaking of smoke screens, it dawned on me
10 when I got a -- a look at this that was shown to you in
11 opening and with the witnesses, that there is a literal
12 smoke screen over this last sentence.

13 And if you look real closely at what they
14 didn't show you, it says: Applicant has amended 22, 25,
15 and 27 to describe a new Figure 8. So let's find out
16 what's going on here.

17 Can we go back, please?

18 Let's talk about this deletion. There were
19 five paragraphs in the '626 patent. What did they deal
20 with? They dealt with test signals. That's what's
21 underlined in red all over there.

22 Why did the '626 patent talk about test
23 signals? Because that's what it claimed. The claims
24 are on the screen in front of you. It's all about test
25 signals.

1 Our case is not about test signals. The '580,
2 Claim 59, which is at issue in this case, is on the
3 screen. You won't see test signal anywhere in it.

4 So what happened? We took the language that
5 related to test signals, which we didn't need, and we
6 took it out, and we took the claim language out. And
7 there was nothing suspicious or funny about it. If we
8 were trying to do something weird, it was a really bad
9 idea because we were taking support out. Why would we
10 do that?

11 And so what happens then? We insert Figure 8
12 into the patent. That's what was covered over, right?
13 And what is Figure 8 that gets put into the patent
14 before you? It's exactly the same figure from the 1997
15 provisional application. There was no monkey business
16 here. It's exactly the same figure disclosed on day
17 one.

18 And if you thought there was a deletion, it
19 wasn't very good because what happened? In the '580
20 patent, we incorporate everything by reference,
21 including the '626. That's what's highlighted there.

22 So if we tried to delete it, we stuck it right
23 back in in the next sentence. There was nothing here.
24 But that's what they've been talking to you about for
25 days in this trial.

1 Let's talk about damages for a minute.
2 Remember that the law that the Judge has instructed you
3 on requires you to consider a hypothetical negotiation.
4 And in that negotiation, the parties say two things to
5 each other: These patents are valid, and Samsung wants
6 to infringe them.

7 Remember that there are these Georgia Pacific
8 factors that you've been instructed on, and we've talked
9 about a lot of them during the trial of this case. For
10 now, I want to focus briefly on Nos. 9 and 10.

11 THE COURT: Seventeen minutes have been used,
12 Counsel.

13 MR. ANAIPAKOS: Thank you, Your Honor.

14 The advantages and benefits of the patented
15 invention.

16 And you've heard about this time and again.
17 This is straight out of Samsung's files, the advantages
18 of EDR. The most important advantage, backwards
19 compatible, new stuff working with old stuff.

20 But there were battery life improvements,
21 power improvements, the ability to move more data so
22 things worked faster; you get better performance.
23 That's all undisputed and straight out of their files.

24 I told you in opening statement that the
25 invention in this case was at the heart of EDR and that

1 EDR would not work without multiple modulation systems.

2 And then you heard it from the horse's mouth
3 when Dr. Hall took the stand. His testimony is on the
4 screen.

5 If Bluetooth EDR didn't have two types of
6 modulation methods, EDR wouldn't work either?

7 Answer: That's correct.

8 And if you only had one type of modulation
9 method, EDR would not work?

10 And you see his answer.

11 So what do they do when they know that EDR is
12 at the heart of the -- that our invention is at the
13 heart of EDR? They go hire this survey expert to come
14 in here and try to belittle the invention by saying:
15 Oh, no one knows what EDR is, so it's really not that
16 important.

17 I'll never forget this guy when he took the
18 stand, and you saw what he told me about the secret
19 survey he had and the like. But what happened at the
20 end?

21 At the end, he had to concede that the survey
22 they had done has, quote, got nothing to do with
23 importance. It has everything to do with awareness.

24 And that's not a surprise. I'm sure most
25 people have never heard of EDR. Just like those long

1 words I was writing on the butcher paper that no one
2 knew, including me, what they meant.

3 That didn't mean that Vitamin D wasn't
4 important or that the car parts you can't name aren't
5 important.

6 The BlackBerry licenses we've -- we've talked
7 about. That's what they want you to ignore. And I
8 would ask you please to look at this. It's Plaintiff's
9 Exhibit 879.

10 Why is it important? It's the only license to
11 the patents-in-suit. It was an arms-length deal. You
12 heard some question about a conspiracy between us and
13 BlackBerry. There is zero evidence of that, other than
14 some lawyer's question. There wasn't any witness who
15 even hinted at that.

16 It's not a fully paid-up license. And when
17 you look at it, you learn that as the negotiations
18 between Rembrandt and BlackBerry continued, the amount
19 went up every day by how much? 10 cents a unit.

20 Every unit that BlackBerry sold, they paid 10
21 cents more. What does that tell you about what they
22 were paying?

23 But Mr. Becker wants to tell you about the
24 Bandspeed settlement agreement. And we've talked about
25 that case. I really can't think of a worse case.

1 There's a company that's in the Bluetooth SIG.
2 They've already licensed to Samsung, and then they sued
3 them. That's the case he wants you to focus on, not the
4 case in this courtroom.

5 How did we get to the chips? We relied on
6 Dr. Morrow and Dr. Jones. They looked at it. Dr. Jones
7 used to work for Broadcom. He's looking at the Broadcom
8 chips. He says: This is not the right comparable.

9 So what do we do? We go into the market, and
10 we go to Texas Instruments. And when EDR is released,
11 we look at the chip that has EDR and the chip that
12 doesn't have EDR, because it's the purest price
13 comparison.

14 What do they want us to do? They want us to
15 go to some Broadcom chips that have other stuff built
16 into them.

17 And if we did that, what would they be saying
18 here today? They would say: Oh, it's a bowl of
19 spaghetti. You can't tell how much EDR is driving
20 value.

21 Damned if you do; damned if you don't. That's
22 why we went to the TI chips. It's the best comparison.

23 So when you think about the hypothetical
24 negotiation, think about life with no EDR. Here comes a
25 new device, and what happens? All the other devices go

1 into the garbage. Without EDR, there's no backwards
2 compatibility.

3 So what does that mean about the negotiation?
4 Think about this hypothetical negotiation. You've got
5 Samsung at one end of the table; you've got Rembrandt at
6 the other.

7 Samsung knows it needs a license to this
8 technology. If it doesn't get it, then every device it
9 sells is not going to work with older devices back at
10 home. So you sell a phone; it's not going to work with
11 the headpiece; it's not going to stream music.

12 So what are your options? You take a license
13 or you don't. If you -- if you don't take a license and
14 you have these problems, you're going to have customers
15 that are really unhappy.

16 And guess what? There's an Apple store across
17 the street, right? There's a -- there's an LG store
18 next door. They don't have to buy from you.

19 So now you're a Samsung executive. You can
20 solve all that problem by taking a license. Would you
21 do that for 11 cents for every device? Would you get
22 out of that business nightmare for 11 cents?

23 The Judge instructed you you can use your
24 common sense. And I ask you please to do that. When
25 you think about this issue, think about that. Put

1 yourself in the Samsung person's shoes. Would you pay
2 11 cents to avoid that and make your products backwards
3 compatible?

4 If the answer is yes and Samsung has put this
5 invention into hundreds of millions of devices, then at
6 11 cents, it's \$31.9 million. That's what the evidence
7 in this case has shown.

8 I'll be back to talk to you again in rebuttal.
9 I thank you for your time this morning.

10 Thank you, Your Honor.

11 THE COURT: All right. The Defendants may
12 present their closing argument.

13 MR. SHERWOOD: Yes, Your Honor.

14 THE COURT: Mr. Sherwood, would you like a
15 warning on your time?

16 MR. SHERWOOD: Yes, Your Honor. I would like
17 to be given notice when 20 minutes remain.

18 THE COURT: Twenty minutes remain, when you've
19 used 15?

20 MR. SHERWOOD: Yes, Your Honor.

21 THE COURT: All right. Proceed.

22 MR. SHERWOOD: Thank you very much.

23 Good morning, ladies and gentlemen. Thank you
24 very much for your service here and for keeping an open
25 mind during this trial.

1 I want to briefly review some of the evidence
2 and the proper way that I think you should consider that
3 evidence, and I want you to look at the evidence and not
4 be swayed by emotion or any rhetoric that you may hear
5 from the Plaintiff.

6 I will call out the exhibit numbers as I go
7 along during my closing. And the rule of the Court is,
8 if you don't ask for those exhibits, they will not be
9 brought back to the jury room. So please take a note of
10 them and ask for them in the jury room.

11 I told you in my opening that Samsung does not
12 infringe these patents, and now you've seen the
13 evidence, and it could not be clearer that Samsung does
14 not infringe.

15 Rembrandt failed to meet its burden of proving
16 more likely than not that Samsung infringes, because
17 every one of these claims requires the header of a
18 packet to notify of a change in the modulation method.

19 May we have the first slide?

20 And in fact, in 2003, when the 1.2 header came
21 out -- Mr. Hall testified about this -- there was only
22 one method of modulation. And the header could not have
23 indicated a change in modulation method because there
24 was nothing to change to.

25 And, ladies and gentlemen, that header has

1 never changed. The contents of that header are the same
2 up until today. And the reason for that is so that all
3 Bluetooth devices can communicate with each other.

4 Next slide, please.

5 To use my analogy, Rembrandt has failed the
6 spelling bee, because they had to prove, as Dr. Morrow
7 agreed and as Dr. Goodman told you, that Samsung
8 literally meets every element of the claim.

9 And Judge Gilstrap repeated that in his
10 closing instructions to you a few minutes ago. That
11 means there is no infringement, and that means there is
12 no liability.

13 Now, you will decide the issue of invalidity
14 as well, and because the Judge has instructed you to do
15 so and -- and also because, after having sat through
16 this trial and all the evidence, nobody should have to
17 pass this way again.

18 Remember, there are only three claims for you
19 to consider here. And as you can see from your patents
20 in the juror notebooks, there are many more claims that
21 Rembrandt has. Your decision will not affect any of
22 those other claims.

23 In my opening, I told you these claims are
24 invalid for two reasons.

25 The first is lack of written description.

1 That simply means that Rembrandt cannot have more than
2 Mr. Bremer described in writing when he submitted his
3 first application in 1997, not in 1998, which is what
4 Mr. Anaipakos was just talking about.

5 Check out PX-863 and look at the date. That's
6 the Claim 23 that they talked about during
7 cross-examination of Dr. Goodman. It's not dated 1997,
8 the date they want. It's 1998.

9 The second reason for invalidity is
10 obviousness. In 1997, Dr. -- Mr. Bremer's invention was
11 obvious, and it was obvious because a research group at
12 the Bell Labs part of Lucent had invented a wireless
13 system using two different modulation methods.

14 They got a patent for that invention, and
15 Dr. Goodman explained that when you combined that patent
16 submitted before the Bremer patent with the prior art,
17 Bremer's invention was obvious.

18 Slide 3, please.

19 Remember, this was part of Dr. Goodman's
20 analysis. They look pretty similar, don't they? As
21 Mr. Anaipakos told you, Rembrandt did have an invalidity
22 expert as well. His name is Dr. Robert Akl.

23 And here's the page in your jury notebooks.
24 It's a blank page. Some of you may have recognized him
25 sitting in the courtroom here. He never made the walk

1 up to the witness stand, even though he was right over
2 there. Only Dr. Goodman took an oath, walked the
3 30 feet to the witness stand and testified. Dr. Akl, he
4 left town.

5 So what does that tell you about Rembrandt's
6 arguments here about invalidity? If Dr. Akl's opinions
7 were so good as they want you to believe, why wouldn't
8 they have had Dr. Akl march right up here and tell you
9 about them?

10 Judge Gilstrap told you you can use your
11 common sense in deciding this case. Well, here's a
12 great example of doing that. When someone doesn't show
13 up, common sense tells you Dr. Akl had nothing good to
14 say about these three validity claims.

15 And I'll go into that further in a moment, but
16 let's spend a minute reviewing the evidence that you
17 heard this week.

18 Remember that Dr. Bremer was the first
19 witness -- Mr. Bremer. He worked for a company called
20 Paradyne, which like Lucent, was part of AT&T. He won a
21 bunch of awards. You even saw pictures of them.

22 But none of them had anything to do with the
23 issues in this case, which he admitted on
24 cross-examination. I can't imagine why we had to look
25 at those pictures unless it was to be distracted from

1 the truth here.

2 You heard Rembrandt's lawyers say in opening
3 that Mr. Bremer's invention is at the heart of EDR.
4 Mr. Bremer testified he didn't even know about Bluetooth
5 until 2007, three years after Bluetooth with EDR was out
6 in the marketplace. Mr. Bremer most clearly did not
7 invent EDR.

8 And by the way -- Slide 5, please.

9 Here's a list of other things that Mr. Bremer
10 admitted he did not invent, including master/slave.

11 On direct, Mr. Bremer said he's proud of his
12 patents and glad to be here, but on cross, he admitted
13 he hired a lawyer to get the best deal out of Rembrandt
14 because he couldn't otherwise be bothered to be here.

15 And what did he do after he got on the witness
16 stand? He's not in the courtroom now. He left town,
17 too. Mr. Bremer wrote a memo saying his patents offered
18 a real competitive advantage. I don't know if you
19 remember that, but that's DX-7. Not so. Not even his
20 company took him up on that.

21 Slide 7, please.

22 No products for any of his inventions.

23 Mr. Ward, another Rembrandt lawyer, told you
24 in voir dire that battery life was a part of
25 Mr. Bremer's invention.

1 But when Mr. Bremer testified -- and remember,
2 his testimony is evidence; what the lawyers say is
3 not -- he couldn't even remember -- next slide,
4 please -- whether his patents mention battery life.

5 And guess what? Battery life is never
6 mentioned in these patents because there's no discussion
7 about any device that needs a battery.

8 Remember, Mr. Bremer tried to sell the
9 patents. No one wanted them. And these patents were
10 eventually bought by Rembrandt as a big group of 74
11 patents and patent applications. By then, Mr. Bremer
12 was working for Rembrandt.

13 You'll remember Paul Schneck testified, the
14 chairman of Rembrandt, sitting here at counsel table.
15 He told you he looks for Rembrandts in the attics.

16 Slide 9, please.

17 To coin a phrase from a famous Texas Senator,
18 Lloyd Benson, we know what Rembrandts look like, and
19 these, sir, are not Rembrandts.

20 But that's where Dr. Schneck's secret sauce
21 comes into play, because he is a touch-up artist.
22 Remember this document.

23 Slide 10. Next slide, please. Yeah.

24 This is the secret sauce document. After he
25 buys these patents, Rembrandt goes to work on them, just

1 like a touch-up artist, to pass it off as a famous
2 master's painting after touching it up to make it look
3 that way.

4 So as Dr. Bremer -- as Dr. Schneck told you,
5 they got a committee of people at Rembrandt together,
6 and they started working on their secret sauce. The
7 plan was to go after Bluetooth, the voluntary industry
8 organization that you heard about from Mr. Hall, the
9 group that shares Bluetooth technology for free.

10 And so Dr. Schneck's company filed a new
11 patent application that grew into two patents at issue
12 here that they call the Bluetooth patents.

13 Ask the Court for DX-1117. That's the
14 document. And, yes, just as Rembrandt planned, the two
15 patents are now being asserted against Bluetooth chips,
16 a product that Samsung buys from other companies.

17 Another witness you heard from was Stephen
18 Hall, a senior engineer at Broadcom. Mr. Hall is the
19 father of EDR. He was the chairman of the committee
20 that developed it. When it comes to EDR, he is the man.

21 He never heard of Mr. Bremer, knew nothing
22 about these patents. And that makes sense, because
23 Mr. Bremer and Rembrandt admitted they contributed
24 nothing to the Bluetooth Group's efforts, as you see
25 here from his testimony.

1 By the way, Rembrandt made a big fuss, both
2 during the trial and this morning, about Samsung's
3 corporate representative not knowing about the
4 technology in Broadcom's chips.

5 Remember that?

6 Dr. Benner, sitting here at counsel table, has
7 a Ph.D. in anthropology. He is a highly educated man
8 who has a specific job at Samsung. Samsung is full of
9 people like that, Dr. Benner, who are specialists in
10 their respective fields.

11 If we had brought somebody who was a
12 specialist in some other field, don't you think
13 Rembrandt would have complained about that as well?

14 What is that complaint about? It's another
15 effort to avoid the facts, I submit to you. Dr. Benner
16 took the stand, testified about the surveys he knew
17 about, which were relevant to the issues in this case.
18 That's more than we can say about Dr. Akl.

19 Dr. Benner, by the way, has a real job at
20 Samsung, but it was important for him to be here every
21 day. And every minute that you were in this jury box,
22 he was at that table.

23 Let's look at the merits of the evidence now,
24 and let's start with infringement.

25 Slide 12.

1 You'll recall that every claim that's asserted
2 here requires a change -- a notification of a change in
3 the modulation method. This requirement is repeated --
4 repeated over and over and over again.

5 Bluetooth does not do that, pure and simple.
6 Why not?

7 Slide 13.

8 Because they never changed the header back
9 from the days when they only had one modulation method.
10 As Mr. Hall told you at the end of this exchange, we
11 deliberately didn't change the structure because they
12 wanted all Bluetooth devices to communicate with each
13 other. Dr. Hall explained that the header is not what
14 indicates the modulation method.

15 What was the rest of the testimony on this
16 issue?

17 Slide 14, please.

18 Well, they played Mr. Lim's testimony. This
19 is something I showed you in opening. Look at the
20 highlighted portion at the bottom that is referring to
21 TYPE code, which is the only thing that's in the header
22 with respect to this. It does not indicate whether it's
23 basic rate or EDR.

24 What does that mean? It doesn't tell you
25 whether there's going to be a change in the modulation

1 method.

2 When I asked Dr. Morrow if Mr. Lim could be
3 saying here that you can't make the determination except
4 by consulting a table that's not in the header, he
5 agreed.

6 What did Dr. Morrow say about the information
7 needed? Let's look at Slide 15, which shows what has to
8 happen before you know the packet type. Three steps,
9 and I went through that with him.

10 The first step, what's the logical transport?
11 Not in the header.

12 Second step, is EDR enabled? Not in the
13 header. Therefore, it doesn't tell you whether there's
14 a change in modulation.

15 And by the way, you just heard that Dr. Morrow
16 wrote the book on Bluetooth. Well, he told us in this
17 jury -- in -- in the witness stand, the book he wrote
18 came out before EDR came out.

19 He didn't write a book about EDR. Dr. Hall,
20 who spent all that time, three-and-a-half years, as Mr.
21 Anaipakos told you, he did write the book. He is the
22 expert.

23 And Dr. Jones, by the way, he gave no opinion
24 at all.

25 This slide, misleading. The testimony is not

1 as you just heard it. In fact, the testimony is, from
2 all of the witnesses, there is no notification of the
3 change in modulation method in the header. Never has
4 been; never will be.

5 Okay. What did -- let -- let's have the next
6 slide, please.

7 Here is Dr. Morrow's testimony, and he's
8 asked: What's in the header and what's not?

9 So if you look part way down the page, I said:
10 And that's not in the header either, is it?

11 And he said: That's right.

12 And then I asked him: What do you need to
13 know to know what packet type, to know what modulation
14 method is coming?

15 And he said: These two pieces of information,
16 plus the TYPE code.

17 And those first two pieces, the first two
18 parts of that three-step process are not in the header.

19 Next slide, please.

20 Dr. Goodman said the same thing. Look at his
21 testimony over here on the right. It tells you what
22 they might be, what might be coming, but it doesn't tell
23 you which packet type is coming. That's what all these
24 claims require.

25 Next slide, please.

1 Mr. Hall asked the same thing.

2 Is there any information not in the header
3 that Bluetooth needs to determine the modulation method?

4 Answer: Yes, there is.

5 Question: What is that?

6 That is actually which logical transport to
7 use.

8 Question: Any other information?

9 Answer: And there's a packet type table.

10 And then the question is: Are they in the
11 header?

12 Answer: No.

13 Page 84 of the transcript.

14 So here's what the testimony is, ladies and
15 gentlemen, from the witnesses who know. This table at
16 the right, which is not in the header, is all the
17 information that you need.

18 If you only know TYPE code, if you only know
19 what's in that column -- could we have the animation?

20 When you go down, let's say your TYPE code is
21 0100, that's all you know from the header. You don't
22 know, looking across to the right, what packet is
23 coming, because the information in the column headings,
24 that's not in the header.

25 THE COURT: Fifteen minutes have been used,

1 Counsel.

2 MR. SHERWOOD: Thank you, Your Honor.

3 So, remember, for literal infringement, an
4 element is missing.

5 Let's turn to invalidity. First of all,
6 there's no issue on who is a person of ordinary skill,
7 because there was only one witness to testify. So when
8 you think about it, remember, it's a person with a
9 master's degree in the relevant field, someone who is
10 highly skilled.

11 Mr. Bremer never showed in his 1997 filing
12 that there were tribs that used two modulation methods.
13 He had a Figure 3 that only showed one. In the jury
14 room, look at Figure 3 in DX-1233.

15 But that didn't slow Rembrandt down. They
16 started working their secret sauce to see what they
17 could do to shuck and jibe in front of the Patent Office
18 and get the invention date and take Mr. Bremer's later
19 disclosure out of the patent.

20 In 2009, two years after they bought the
21 patent, they applied for the '580, and they relied on a
22 2003 disclosure that made an incorporation by reference.

23 The Patent Office told Rembrandt it would
24 allow those claims. And after getting that news,
25 Rembrandt did something really strange. It took

1 something out of the patent application. It took
2 something out, because they wanted that earlier
3 invention date. They wanted the 1997 date.

4 So look here. The argument they're making now
5 is: In 2009, we incorporated this by reference. And in
6 2011, we deleted it, but we didn't really delete it.
7 It's still there.

8 In other words, Rembrandt is saying: You
9 cannot take us at our word when we told the United
10 States Government in 2011 that we were taking this
11 Figure 8 out of our original submission.

12 Again, use your common sense. Hold them to
13 what they told the United States Government when they
14 applied for this patent. And by the way, you heard
15 about Claim 23 from Rembrandt's lawyers, but not from
16 the Rembrandt expert.

17 That claim was filed in 1998, not 1997. It's
18 irrelevant when you're claiming priority to a 1997
19 invention date. Maybe that's why Dr. Akl didn't come
20 into the courtroom, take an oath, and testify.

21 Finally, you heard evidence about obviousness.
22 Remember my pencil slide? It would be obvious for a
23 pencil-maker to combine a lead pencil and an eraser.

24 That's what Dr. Goodman explained to you when
25 he took you through his analysis of the Lucent patent,

1 the prior art, including master/slave, which Mr. Bremer
2 admitted was in the prior art and the other things.

3 What did Rembrandt offer in response? A blank
4 page.

5 You heard Rembrandt's lawyers argue that
6 there's no master/slave relationship, but Judge Gilstrap
7 told you attorney argument is not evidence. They have
8 no evidence. Just a blank page. And Mr. Bremer
9 admitted master/slave was in the prior art. It's right
10 there in the patent.

11 Dr. Goodman compared the drawings in Lucent to
12 the Bremer patents, and he said that the access point --

13 Can I have Slide 24, please?

14 -- suggested to him that Access Point 12 here
15 in the Lucent patent suggested a master, and the mobile
16 station suggested slaves.

17 But he didn't stop there. He showed you the
18 Upender article. He showed you other pieces of prior
19 art that he said, he, as a person of skill, in 1997,
20 would have combined.

21 You heard Mr. Anaipakos say that Upender
22 teaches away. There was no testimony about teaching
23 away. None whatsoever.

24 The only testimony was that there are
25 tradeoffs in different choices you make depending on

1 what you want in your network. And Dr. Goodman said
2 simplicity and determinacy are things you might very
3 well ask for.

4 You heard Rembrandt argue also, but not prove
5 with the witness, that Lucent showed only one modulation
6 method. You remember all those wave patterns?

7 Dr. Goodman said those show different families
8 of modulation methods, just like Judge Gilstrap's
9 rulings call for. Rembrandt offered no proof whatsoever
10 on that.

11 Dr. Goodman said the Lucent patent shows
12 varying different characteristics of a carrier wave,
13 including pulse. It's called pulse position modulation.

14 No one came to court under oath to tell you
15 that a method called pulse position modulation is not a
16 type of modulation, which brings me to the issue of the
17 burden of proof.

18 Samsung does have a burden on invalidity, but
19 let's break that down a little bit.

20 First of all, the documents, like DX-1231
21 where Rembrandt said it was deleting something, they're
22 all in evidence. There's no issue about the words on
23 those pages. We all know what the word "delete" means.
24 That means out. And that is a hundred percent proved.

25 Is there anything left to prove? Well, there

1 might be a little bit. Some matter of interpretation.
2 But here you only heard one interpretation from
3 Dr. Goodman.

4 So if he said pulse position modulation is a
5 type of modulation, that's all that's in the record.
6 And that means that the Lucent patent shows two
7 different types of modulation. And with only one expert
8 here speaking for you, that means these claims are
9 obvious for all the reasons Dr. Goodman told you.

10 Now, can I have the ELMO, please?

11 When you go back in the jury room, you'll be
12 asked -- you'll be asked to complete this form.

13 First, did Rembrandt prove by a preponderance
14 of the evidence that Samsung infringed any of the
15 following asserted claims?

16 I submit to you the answer to that question is
17 no.

18 Second, you'll be asked: Did Samsung prove by
19 clear and convincing evidence that any of the following
20 claims of the '580 and the '228 are invalid?

21 And the answer to those questions are yes.

22 And you do not have to complete the rest of
23 the form, ladies and gentlemen.

24 Mr. Jenner, my colleague will finish the
25 presentation for Samsung, Your Honor.

1 THE COURT: Would you like a warning on the
2 expiration of your time, Mr. Jenner?

3 MR. JENNER: Yes, sir. Five, please.

4 THE COURT: All right. Proceed.

5 MR. JENNER: Thank you, Mr. Sherwood.

6 And thank you, ladies and gentlemen, for your
7 attention throughout this trial.

8 First, a caution. You might think that
9 because I'm going to talk about damages, Samsung is
10 admitting that it infringes and there are damages. That
11 logic might be true outside this courtroom, but in here,
12 things are different.

13 Even though we think Samsung owes Rembrandt
14 nothing, I have to address damages, because Rembrandt
15 wants \$30 million. We can't ignore that.

16 So you need to understand that even though I
17 am addressing damages, this is no admission on my part
18 or Samsung's part that there should be any damages.

19 Now, let me discuss with you what I think is
20 right.

21 No infringement or invalidity; there's no
22 liability; there's no damages. That's pretty
23 straightforward.

24 So let's go on to the part that matters. What
25 if you think there is liability? Then we have to go

1 through a comparison of the evidence on the damages.

2 Basically, you heard Samsung's position,
3 primarily articulated by Dr. Becker, is that the damages
4 are on the order of \$500,000. You also heard Mr. --
5 Mr. Weinstein primarily articulate Rembrandt's position.
6 They want somewhere between 14 and \$31 million.

7 So, first, before I start going through this,
8 in light of those widely divergent claims, I'd like you
9 to keep in mind as I review this evidence, three things:
10 Reliability, credibility, and fairness.

11 Consider what testimony on damages was
12 reliable and incredible, and what result is fair and not
13 overreaching.

14 Let's start with Dr. Becker's analysis. He
15 relied primarily on four data points for his view of how
16 the Georgia Pacific hypothetical negotiation be --
17 should be conducted, and here they are. Let me talk
18 about them.

19 The first one was the Bluetooth SIG agreement.
20 This is Exhibit DX-1255, if you ask for it. This is the
21 agreement in which 24,000 companies have agreed that
22 Bluetooth technology should be shared royalty free, that
23 each of them believed the development of Bluetooth would
24 be enhanced by allowing others who agree to share for
25 free the Bluetooth patents.

1 Obviously, Rembrandt didn't agree to that.
2 They're not a part of it. They're taking advantage of
3 the fact that they're not a part of it to demand
4 \$30 million. They have the right to do that, but take
5 into account as Data Point 1, the Bluetooth SIG
6 agreement that 24,000 companies have signed up to.

7 Data Point 2 was the 2007 Rembrandt/Zhone sale
8 agreement. That's a situation where Rembrandt paid
9 \$5 million, and it got 74 patents and applications,
10 including Bremer.

11 The only point I'll ask you to consider here
12 is there's nothing -- there's nothing about this
13 exhibit, DX-1052, if you ask to see it, that shows
14 anything of enormous value on the part of the Bremer
15 patent.

16 Data Point No. 3 was a 2009 agreement where
17 Rembrandt licensed ARRIS after litigation. The license
18 was \$3 million in payment in return for a license under
19 something like 210 or so patents. One of these was the
20 Bremer property.

21 Once again, you can't derive too much from
22 that, other than the fact that nothing about this
23 suggests that the Bremer patent is worth millions.

24 Comes to Data Point No. 4, and that's where
25 the dispute in this case is. Data Point 4, which you

1 should pay particular attention to -- it's DX-1254, if
2 you ask for it -- is the Bandspeed agreement which I
3 submit is the significant agreement in this case.

4 Bandspeed is most important because it
5 occurred in the same time period as the hypothetical
6 negotiation. That's September of 2011. This agreement
7 is June 2011.

8 It accused the same Samsung products. It
9 involved the same Bluetooth chips. It involved the same
10 number of patents: Two. And it was for comparable
11 technology that you've heard about, the adaptive
12 frequency hopping of Bluetooth.

13 This is what you will see as a Factor 2
14 agreement. It relates to similar patents, not the same
15 patents. I readily acknowledge that. But the only
16 other agreement that had the same patents, which is
17 where Rembrandt bases its case, is the BlackBerry
18 agreement.

19 And as you heard during the trial and as I'll
20 recap in a while, the BlackBerry agreement is worthless.
21 You can't rely on it because there was no price that the
22 parties ever agreed on. You can't compare anything to a
23 priceless agreement.

24 So here's what Dr. Becker said. Take the
25 950,000-dollar lump-sum payment and make these so-called

1 Georgia Pacific factor adjustments. He thought three of
2 them would lower the value. The license was shorter.
3 It was only in the United States and so on.

4 One of them would raise the value because the
5 patent's presumed valid at the hypothetical negotiation.
6 He got to \$500,000.

7 He was criticized because he didn't put a
8 value on each of these factors, but if you think back,
9 Mr. Weinstein didn't put a value on the factors he
10 relied on either.

11 And Dr. Becker explained they don't normally,
12 these damages experts, put the value on these factors.
13 They look at them as a whole, and they decide how they
14 affect the price. He thought it affected the price down
15 to 500,000.

16 You, the jurors, get to consider these factors
17 and are the ultimate arbiters. You may decide
18 Dr. Becker is right and the price should be \$500,000.
19 You may decide that the factors should not move down the
20 value that much. For all I know, you may think that the
21 right price is the \$950,000 of the Bandspeed agreement.

22 What that actually does, interestingly, is it
23 gives you a range between \$500,000 and \$950,000. You
24 can decide maybe that there's a number in there that's
25 right. But keep in mind, that's a lot more credible and

1 rational and fair than the 15 to \$30 million that Dr. --
2 that Mr. Weinstein thinks.

3 Now, I want to touch just briefly on value.
4 We heard a lot of talk about the value of EDR. We don't
5 dispute that there's some value to EDR.

6 Dr. Benner acknowledged value, just like
7 there's value in other features in a smartphone. Think
8 about the zoom feature in a camera. There's value in
9 features, but they just aren't worth \$30 million.
10 That's not fair.

11 It's overreaching for Rembrandt to suggest
12 that EDR is the solution to battery life when the survey
13 reports you -- you saw show that Samsung's phones all
14 had EDR for years, but EDR didn't solve the customer
15 complaints about battery life. It wasn't the cure-all.

16 The bottom line is, if you find infringement,
17 these patents are worth around \$500,000. It's
18 irrational to think that they're worth 30 million when
19 virtually nobody knows about EDR.

20 And remember, the only way that Rembrandt gets
21 to \$30 million is through Mr. Weinstein's chip price
22 analysis. So let's look at that now and see if that's
23 reliable and credible.

24 Here's the methodologies. One of them is the
25 chip price analysis on the left. The other one I'll

1 come to is the BlackBerry agreement. The chip price
2 comparison, I submit to you, was unreliable methodology
3 using cherrypicked data and not applicable to Samsung's
4 actual products, among other problems.

5 THE COURT: Five minutes remaining.

6 MR. JENNER: Here's the chart that I showed
7 you of the TI data. You can see the two rows that
8 Mr. Weinstein relied on where he cherrypicked the
9 occasions where the prices went up a bunch for EDR
10 chips.

11 He didn't bother with the first quarter of
12 2007 where, as things stabilized, it's a 1-cent
13 difference, which we talked about. I'll come back to
14 that.

15 There were questions raised about, well, he
16 didn't have the later data. Samsung didn't give him the
17 later data. He could have requested it. They could
18 have gone and gotten it from TI.

19 But the fact is he did get the later data. He
20 had all this data. He acknowledged that. He could have
21 changed his opinion in light of the rest of it, and he
22 didn't do that.

23 Look at the later data from the second quarter
24 of 2007 onward, every single quarter, after things had
25 obviously stabilized, the price of the EDR chip is

1 lower, not higher.

2 And Dr. Benner -- Dr. Becker even showed you
3 two quarters in 2008 where about the same quantities of
4 units, several million, of the old chip, several million
5 of the new chip, were sold. And in those two quarters,
6 the price of EDR was lower.

7 The only justification that you were offered
8 for this is that in the quarters chosen by
9 Mr. Weinstein, there is supposedly a peer comparison.
10 The only thing that changed was EDR.

11 Not so. He admitted on my -- my
12 cross-examination that there were other things that went
13 into the chips. Smaller process technology that made
14 lower line size transistors, a more sensitive receiver,
15 lower -- lower transmit power.

16 So you have to take the price into account of
17 the process change, the new receiver, and the
18 transmitter, and he didn't use any of those in -- in
19 acknowledging that those were factors that could have
20 changed the price of the chip, even if this analysis was
21 the right way to go about it.

22 To go back to the first quarter of 2007, you
23 may remember this chart that I showed him, which was to
24 take the 1-cent difference in the first quarter of 2007
25 and walk through his entire analysis. And when you do

1 that, you come to a payment, if you believe in this
2 process, of \$916,000.

3 And what do you think about that? That's
4 right in Dr. Becker's sweet spot between \$500,000 and
5 \$950,000 for the Bandspeed agreement. This is what's
6 sensible if you even think that this methodology makes
7 sense.

8 Now, let's look at the BlackBerry agreement,
9 which is the other agreement you're supposed to consider
10 instead of Bandspeed. That was wrong from start to
11 finish, because the whole analysis you heard was
12 completely fabricated for litigation.

13 Here is Paragraph 4.1, the payment provision
14 where the payment X is plainly a lump sum. It's not
15 some running royalty they want you to believe of
16 10 cents that became applicable here.

17 Here's the paragraph where they tried to
18 concoct the 10-cent royalty. And you can see from the
19 paragraph, even in the part where Rembrandt's
20 calculation is stated, they admit it's a lump sum, and
21 they end by saying: BlackBerry does not agree to an
22 allocation of the payment.

23 No matter what anybody says about what they
24 think BlackBerry thought or maybe some allocation was
25 okay, this is the agreement. This is the contract.

1 BlackBerry does not agree to this allocation. It's a
2 single lump sum.

3 It's an allocation concocted by Rembrandt.
4 BlackBerry rejected the allocation. There was no
5 agreement on the price for the license components, so
6 you don't have a Factor 1 agreement that you can make
7 comparisons with.

8 There was no agreement on a running royalty.
9 There was no agreement on this allocation whatsoever.

10 More, you heard the cross-examination where I
11 showed this email to Mr. Weinstein. When I asked him
12 whether it wasn't the fact that the parties, Rembrandt
13 and BlackBerry, were actually colluding, and I read the
14 highlighted section where counsel for BlackBerry asked
15 if Weinstein could determine if the amount they were
16 talking about could help him with his purposes going
17 forward.

18 What were the purposes going forward? The
19 only purpose left was to stick Samsung with a
20 30-million-dollar payment. That's collusion, ladies and
21 gentlemen. That's what was going on here, not a valid
22 Factor 1 agreement.

23 And when I asked him about the 10-cent royalty
24 that they want you to buy into, he admitted when I
25 showed him his deposition, he didn't even calculate that

1 10-cent royalty.

2 THE COURT: Thirty seconds.

3 MR. JENNER: It was given to him by Rembrandt.
4 He didn't do the work himself. He wasn't even acting as
5 an independent expert.

6 So at the end of the day, that analysis
7 doesn't get you to 30 million. None of it is reliable.
8 The right answer is something on the order of \$500,000.

9 The last thing I want to say to you, ladies
10 and gentlemen, is remember that you're now going to hear
11 more from Rembrandt for 15 minutes. We don't get to
12 reply.

13 That's the rules of the game, but bear in
14 mind, this gives Rembrandt 15 minutes to say anything
15 they want to about the facts, arguments, sound bites,
16 hyperbole --

17 THE COURT: Your time is up, Counsel.

18 MR. JENNER: I'm sorry, Your Honor?

19 THE COURT: Your time is up.

20 MR. JENNER: Take it with a grain of salt.

21 Thank you very much, ladies and gentlemen. I
22 appreciate your attention.

23 Thank you, Your Honor.

24 THE COURT: Thank you, Counsel.

25 MR. ANAIPAKOS: Your Honor, may I ask of the

1 Court --

2 THE COURT: You have 12 minutes.

3 MR. ANAIPAKOS: Thank you, Your Honor.

4 May I proceed?

5 THE COURT: Would you like a warning on this
6 remaining time?

7 MR. ANAIPAKOS: Please, Your Honor, at three
8 minutes.

9 THE COURT: Three minutes.

10 Proceed.

11 MR. ANAIPAKOS: Thank you, Your Honor.

12 Can we have Rebuttal Slide 8, please?

13 I told you when I started that this was about
14 hiding the truth and smoke screens. They just put this
15 document up on the screen before you, and they're trying
16 to use it to invalidate my client's patents. They try
17 to say: Oh, don't worry. It's just a couple of the
18 claims. They know that we're bringing the best claims
19 in this case.

20 If you invalidate these claims, these patents
21 are gone. And they put this on the screen in front of
22 you, and they say to you with a straight face that this
23 is out of the Lucent patent. That is not true.

24 And I will ask you, please, to look at it when
25 you go back there. These boxes that they've colored in,

1 they have colored in to make it look like our invention.

2 That's not even the way this -- this scheme,
3 Figure 1, shows up in the Lucent patent. These lawyers
4 turned it to make it more -- look more like ours. But
5 what's the worst thing?

6 You see that master/slave, master/slave
7 language on there. They're trying to say, this
8 discloses master/slave. I would agree if that was in
9 the document. That is lawyer graffiti. It's not
10 anywhere in the documents. It's not in there. Look at
11 it.

12 They wrote that in there and told you with a
13 straight face that this invalidates our patent. That is
14 shameful. Shameful. And they did that in open court.

15 Can you please put up Exhibit -- I guess it's
16 Slide No. 2.

17 Let's talk briefly about written description.
18 Dr. Goodman made it clear that the claims that you're
19 actually looking at in this case are about a master
20 transceiver. That's it. He made that very clear.

21 Go to the next slide, please.

22 And if you look at our claim language, that's
23 what we claim. So there really isn't any dispute about
24 that.

25 Provisional applications, you'll look at that,

1 the one from 1997. Those don't have claims in them.
2 That's why it's a 1998 filing that you look at. That's
3 when you first start adding claims. The provisionals
4 don't have claims in them. That's the way the law
5 works.

6 In 1998 is the first time you're going to see
7 the claims. That's why I was telling you to look at the
8 1998 patent application. That's where the claims are.

9 Can we turn, please, to Slide No. 4?

10 You saw this in -- in opposing counsel's
11 argument where they were trying to say that somehow we
12 actually didn't incorporate stuff by reference because
13 it was removed in March of 2011.

14 Turn to the next one, please, No. 5.

15 But our patent issues in September of 2011,
16 and that language is still in there, okay? There was
17 nothing deleted. We've walked through that. It's more
18 smoke and mirrors, more lawyer graffiti.

19 Let's look at Slide No. 6, please, on
20 infringement.

21 What does Dr. Goodman acknowledge?

22 He acknowledges that not only that Hall wrote
23 that the header indicates the modulation method, but
24 what does he say there?

25 He testified that this describes what's

1 happening in EDR. That's the document that Dr. Hall
2 wrote before lawyers were involved, when no one else was
3 watching, and it describes what our patents do. Look at
4 that document.

5 There's a suggestion that we've been
6 cherrypicking prices. Let's look at that.

7 Slide 17, please.

8 The truth is, we didn't cherrypick anything.
9 Mr. Weinstein got this information from Texas
10 Instruments. He didn't pick it. They were the ones who
11 told him which two chip prices -- to which two chips to
12 use.

13 They had the EDR chip and the non-EDR chip.
14 And it's real simple. We picked it, because that's the
15 chip that isolates the difference between the two. It's
16 that simple. This wasn't Roy Weinstein cherrypicking.

17 Go to the next slide, please.

18 The next one. I'm sorry. Slide 10, please.
19 Slide 10.

20 There -- thank you.

21 As I mentioned to you, Dr. Morrow testified
22 that the TI chips were the best that he could find.

23 And Slide 11, please.

24 And Dr. Jones testified the same way.

25 Can you go to Slide 42, please? Slide 42,

1 please, of the original presentation.

2 The next one, please, Slide 42, Question 1 of
3 the verdict form.

4 Slide 39.

5 Let me just turn on the ELMO, if you would,
6 please.

7 Thank you.

8 All right. The questions that you've been
9 asked, infringement of the three patents, the answer to
10 Question No. 1 is yes as to all three. Those are
11 Claim 2 of the '580, Claim 59 of the '580, and Claim 21
12 of the '228 patent.

13 As to whether they have carried their burden
14 to show that these are invalid by clear and convincing
15 evidence, the answer is no as to Question 2 for all
16 three of them.

17 Then I showed you before on damages, the
18 answer is \$31.9 million.

19 Now, I want to talk to you -- I talked to you
20 earlier about the hypothetical negotiation and what it
21 would look like from Samsung's perspective.

22 Now, I want to talk to you about what it would
23 look like from Rembrandt's perspective. Remember what
24 Dr. -- what Dr. Becker said the royalty rate would be
25 for Rembrandt, 8/100 of one penny.

1 So here's the hypothetical negotiation.
2 Dr. Schneck is there for Rembrandt. Dr. Schneck has a
3 Ph.D. from NYU in computer science. He was on the Board
4 of Advisors to our country's National Security Agency.
5 He's a smart man.

6 He's at the table with Samsung. They're
7 talking about backwards compatibility. And the Samsung
8 executives tell him: Dr. Schneck, we want a license,
9 and I've got a deal for you.

10 That's what we're going to pay you,
11 Dr. Schneck. You're going to give me a penny for every
12 device. Not exactly, $8/100$ of one penny. That's what
13 we're going to pay you. So that when we sell about 1200
14 devices, we'll give you a dollar.

15 And they want you to believe that in the
16 hypothetical negotiation, Dr. Schneck would agree to
17 that. Does that make any sense, that Dr. Schneck would
18 agree to something like that?

19 That's what I want you to think about, this
20 hypothetical negotiation and who's motivated to agree to
21 what.

22 Does it make more sense that Dr. Schneck would
23 agree to one, whatever it is, some tiny fraction of a
24 penny, or that Samsung, to get out of this backwards
25 compatibility nightmare that it would be in, would pay

1 11 cents per device? Which makes more sense to you?

2 Let's talk about this BlackBerry license
3 quickly.

4 Slide 26, please, of the rebuttal.

5 If you think that there is a -- there we go.

6 Thank you.

7 Mr. Weinstein testified that BlackBerry was
8 reluctant to agree to an allocation because it would be
9 used against it in other lawsuits. That makes sense.

10 And if you think that there is a collusion
11 between us and BlackBerry, I just -- that makes so
12 little sense. We -- we had sued BlackBerry, and we had
13 been in this court duking it out for a year-and-a-half,
14 and then they suddenly want to jump in bed with us.

15 Does that make any sense? I understand their
16 lawyer wants to believe it, but there isn't a witness in
17 the world who took this stand that said anything like
18 that. BlackBerry is a huge company located up in
19 Dallas.

20 THE COURT: Three minutes remaining.

21 MR. ANAIPAKOS: It makes absolutely no sense.

22 But what do you know? We were colluding with
23 our buddies at BlackBerry, and all the time that we're
24 negotiating an agreement with them, the price is going
25 up. Strange to do that with someone you're colluding

1 with, isn't it? And the price is going up by 10 cents a
2 unit. What does that tell you about what BlackBerry was
3 willing to do in a negotiation?

4 But Dr. Becker doesn't want to talk about
5 BlackBerry that was in this case with these lawyers on
6 these patents before this Judge. They don't want to
7 talk about that because that's not comparable to this
8 case.

9 They want to talk about the Bandspeed case,
10 the bogus lawsuit that didn't involve these patents or
11 this technology. In order to buy off on Dr. Becker's
12 numbers, you have to agree that that's the comparable
13 license.

14 How are you going to do that? It makes no
15 sense. What is comparable? What's before you right in
16 front of your eyes or something somewhere else? That's
17 what this lawsuit has been about from day one. Smoke
18 screens. Lawyer graffiti, half truths. That's what
19 this is about from their perspective.

20 From our perspective, my client has important
21 inventions. Gordon Bremer, yeah, he wasn't a member of
22 the SIG, but he has a hundred patents. He's not going
23 to win a popularity contest, but he's a smart guy, a
24 creative guy.

25 And that's what matters in this court of law.

1 We're not here deciding who the most popular person is.

2 My client has important property rights.

3 We -- we know that you're going to take a long hard look
4 and serious look at the evidence, and we welcome that.
5 Because it's time for all the smoke to vanish and for
6 justice to be done.

7 Thank you.

8 Thank you, Your Honor.

9 THE COURT: All right. Ladies and gentlemen,
10 I'd now like to provide you with just a few final
11 instructions before you retire and begin your
12 deliberations.

13 Again, you must perform your duties as jurors
14 without bias or prejudice to any party. The law does
15 not permit you to be controlled by sympathy, prejudice,
16 or public opinion.

17 All parties expect that you will carefully and
18 impartially consider all the evidence, follow the law as
19 I have given it to you, and reach a just verdict,
20 regardless of the consequences.

21 Answer each question in the verdict form from
22 the facts as you find them to be. Do not decide who you
23 think should win and then answer the questions
24 accordingly. Your answers and your verdict must be
25 unanimous.

1 You should consider and decide this case as a
2 dispute between persons of equal standing in the
3 community, of equal worth, and holding the same or
4 similar stations in life. This is true in patent cases
5 between corporations, partnerships, and individuals.

6 A patent owner is entitled to protect its
7 patent rights under the United States Constitution.
8 This includes bringing a suit in a United States
9 District Court for money damages for infringement.

10 The law recognizes no distinction among types
11 of parties. All corporations, partnerships, and other
12 organizations stand equal before the law, regardless of
13 size or who owns them, and they are to be treated as
14 equals.

15 When you retire to the jury room to deliberate
16 on your verdict, you will each have a copy of this
17 charge to take with you.

18 If you desire to review any of the exhibits
19 which the Court has admitted into evidence, you should
20 advise me by a written note delivered to the court
21 security officer, and I will then send you that exhibit
22 or those exhibits which you've requested.

23 Certain documents that you were shown during
24 the trial are demonstratives. Demonstratives are a
25 party's description, picture, or model to describe

1 something involved in the trial.

2 If your recollection of the evidence differs
3 from the demonstrative, rely on your recollection.
4 Demonstratives are not evidence. However, a witness's
5 testimony that references the demonstrative is evidence.

6 Once you retire, you should first select your
7 foreperson and then conduct your deliberations. If you
8 recess during your deliberations, follow all of the
9 instructions that the Court has given you about your
10 conduct during the trial.

11 After you have reached your verdict, your
12 foreperson will fill in the blanks on the verdict form,
13 reflecting your unanimous answers to the questions that
14 are found therein. The foreperson will then date the
15 verdict form and sign it and then deliver it to the
16 court security officer.

17 Contrary to my earlier instructions, which I
18 gave you repeatedly during the trial, it is now your
19 sworn duty to discuss the case with one another in an
20 effort to reach an agreement, if you can do so.

21 Each of you must decide the case for yourself,
22 but only after full consideration of all the evidence
23 with the other members of the jury.

24 While you are discussing the case among
25 yourselves, don't hesitate to re-examine your own

1 opinions or change your mind if you become convinced
2 that you were wrong. However, don't give up your honest
3 beliefs solely because others might think differently or
4 to finish the case.

5 Do not reveal your answer until such time as
6 you are discharged, unless otherwise directed by me.
7 And you must never disclose to anyone, not even me,
8 your -- your numerical division on any question.

9 Any notes that you've taken during the trial
10 are aids to memory only. If your memory should differ
11 from your notes, then you should rely on your memory and
12 not your notes. The notes are not evidence.

13 A juror who has not taken notes should rely on
14 his or her own independent recollection of the evidence
15 and should not be unduly influenced by the notes of
16 other jurors. Notes are not entitled to any greater
17 weight than the recollection or impression of each juror
18 about the testimony.

19 If you want to communicate with me at any time
20 during your deliberations, please give a written message
21 or question to the court security officer who will bring
22 it to me. I will then respond as promptly as possible
23 in writing or by having you brought back into the
24 courtroom so that I can address you orally.

25 I will always first disclose to the attorneys

1 in the case your question and my response before I
2 answer your question.

3 After you have reached a verdict and I have
4 discharged you, you are not required to talk with anyone
5 about the issues in this case unless I order otherwise.

6 However, you will then be free to discuss the
7 case with anyone, if you choose to do so. Whether or
8 not you discuss your service as jurors after you have
9 been discharged is strictly up to you and no one else.

10 I'll now hand eight copies of these final jury
11 instructions and one clean copy of the verdict form to
12 the court security officer to deliver to you once you
13 retire to deliberate.

14 Ladies and gentlemen of the jury, you may now
15 retire to deliberate. We await your verdict.

16 COURT SECURITY OFFICER: All rise for the
17 jury.

18 (Jury out.)

19 THE COURT: The Court stands in recess
20 awaiting the jury's verdict or a question from the jury.

21 COURT SECURITY OFFICER: All rise.

22 (Jury deliberations.)

23 *****

24

25

CERTIFICATION

I HEREBY CERTIFY that the foregoing is a correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of my ability.

/s/Shelly Holmes
SHELLY HOLMES, CSR, TCRR
Official Court Reporter
State of Texas No. 7804
Expiration Date: 12/31/16

2/13/15
Date